United States Department of the Interior

FISH AND WILDLIFE SERVICE

West Virginia Field Office
694 Beverly Pike
Elkins, West Virginia 26241

FILE COPY

January 30, 2008

Mr. Clyde N. Thompson
Forest Supervisor
Monongahela National Forest
200 Sycamore Street
Elkins, West Virginia 26241

Re: Nine Pipeline Project; Cheat Ranger District

Dear Mr. Thompson:

This letter is in response to your request, dated June 7, 2007, for a site-specific review of the proposed Nine Pipeline Project in the Cheat Ranger District of the Monongahela National Forest (MNF) in Pocahontas County, West Virginia. The following comments are provided pursuant to the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to ensure the protection of endangered and threatened species.

On March 26, 2002, the U.S. Fish and Wildlife Service (Service) issued a programmatic Biological Opinion (programmatic BO) for the continued implementation of the 1986 (as amended) Monongahela National Forest Land and Resource Management Plan (Forest Plan). In July, 2006 that BO was updated and revised to address the proposed 2006 Forest Plan Revision, as well as the most current understanding of Indiana bat biology and life history. This document references the July 2006 BO, rather than the previous March 2002 BO.

The programmatic BO established a two-tiered consultation process for Forest Plan activities, whereby the Service reviews, as they are developed, site-specific projects that may affect federally listed species. The Service determines if any effects will occur as a result of a site-specific project in a manner, or to an extent, not evaluated or previously disclosed and discussed in the Service's programmatic BO. We consider this site-specific project analysis for the Nine Pipeline project area to be "Tier 2" of the consultation process, with the programmatic consultation (and resulting BO) constituting the "Tier 1" consultation. Our project-specific (Tier 2) consultation focuses on: 1) compliance with the reasonable and prudent measures and associated terms and conditions in the programmatic BO; 2) consistency with the scope and effects previously analyzed and disclosed in the programmatic BO and associated

Biological Evaluation; 3) project-specific incidental take vs. take estimated in the programmatic BO; and 4) project-specific reasonable and prudent measures and associated terms and conditions (i.e., for non-jeopardy determinations). In the event of a "may affect" but "not likely

to adversely affect" determination for a specific project that is consistent with the programmatic BO, no further evaluation by the Service is necessary and section 7(a)(2) consultation will be considered complete for that project (e.g., via a concurrence letter documenting the conclusion of informal consultation).

Description of the Proposed Action

The proposed Nine Pipeline project is located northeast of the town of Saint George within the Cheat River watershed. The proposed pipeline corridor would be 30 feet in width and would be approximately 15,060 feet in length. It would tie into an existing natural gas pipeline right-of-way located just west of Forest Road 929 (FS 929) approximately 8.9 miles southeast of Tucker County Route 5 (CR 5). The proposed corridor would continue north/northwest along FS 929 and an access road for 11,900 feet to its junction with CR5. The proposed pipeline would then follow CR5 northeast and southwest to tie into proposed natural gas wells along CR 5. Total cumulative forested land clearing for the project is expected to be approximately 8 acres, including clearing on both private and Forest System lands.

The MNF's proposed action is to authorize Horseshoe Run Services, LLC to construct, operate and maintain approximately 8,050 feet of buried natural gas pipeline on MNF lands along with a brine waterline utilized to carry brine water (natural gas well wastewater) from the well site to disposal tanks off Forest System lands and a telephone line to provide telephone service at the well location site. Two pipeline pig launcher/retrievers would also be authorized and constructed. The total amount of new clearing within Forest System lands is approximately 2.43 acres. A Special Use Permit would be issued to document the authorization. The proposed operation would be within the boundary of the Cheat/Potomac Ranger District of the Monongahela National Forest in Tucker County, West Virginia.

The action area is defined as all areas to be affected directly or indirectly by the proposed Special Use Permit. For this BO, the action area includes the direct and indirect effects on 2.43 acres on MNF lands and on 5.5 acres of private lands.

Species Not Likely To Be Adversely Affected

We have reviewed the information contained in the June, 2007 Nine Pipeline project Biological Evaluation which describes the potential effects of the proposed projects on federally listed species, and the results of surveys conducted in the project area. Botanical surveys were conducted in June and July, 2006 by Michael Baker Corporation and ASC Group, Inc. No listed plant species were located during those surveys. We concur with your determinations of no effect, or may affect/not likely to adversely affect, the bald eagle (*Haliaeetus leucocephalus*), Virginia big-eared bat (*Corynorhinus townsendii virginianus*), Cheat Mountain salamander (*Plethodon nettingi*), West Virginia northern flying squirrel (*Glaucomys sabrinus fuscus*), shale barren rock cress (*Arabis serotina*), running buffalo clover (*Trifolium stoloniferum*), small-whorled pogonia (*Isotria medeoloide*), and Virginia spiraea (*Spiraea virginiana*). We concur with these determinations either due to the lack of habitat or known occurrences in the vicinity of the proposed project, or because surveys did not locate the species within the impact area of the project.

Species Likely To Be Adversely Affected

As described in the Service's programmatic BO, adverse effects are likely to occur to the Indiana bat (*Myotis sodalis*) from harvesting or tree removal under the Forest Service's management program activities. Therefore, given the nature of activities associated with the proposed project, we concur with your determination that incidental take of Indiana bats is possible within the analysis area. However, based on the implementation of reasonable and prudent measures and associated terms and conditions from the programmatic BO, and the proposed site-specific avoidance and conservation measures that will minimize the impact of any incidental take, we have concluded that activities associated with the project will not result in adverse effects to the Indiana bat beyond those that were previously disclosed and discussed in the Service's programmatic BO. This Tier 2 BO identifies the incidental take anticipated due to implementation of proposed activities in the Nine Pipeline Project Area, and the cumulative total of incidental take which has been authorized during this calendar year (Table 1).

Status of the Indiana Bat

The current status of the Indiana bat, its life history, and continued threats are thoroughly described in pages 27 – 43 of the July 2006 programmatic BO. No significant new information on the species has become available since the time of that BO and the drafting of the Tier II BO for this current action. The Indiana bat is a migratory species ranging throughout much of the eastern half of the United States. In 1967 the Indiana bat was listed as endangered by the Service pursuant to the Endangered Species Act (32 Federal Register 4001). Listing was warranted based primarily on large-scale habitat loss and degradation, especially at winter hibernation sites, and significant population declines. From the time that the species was listed, the range-wide population of the Indiana bat has declined approximately 48 to 54 percent, from roughly 883,300 Indiana bats during 1960/1970 to 406,824 - 457,374 bats during 2004/2005 (Clawson 2002; Andrew King, personal communication, 2006). However, this decline is not evenly distributed across its range. Biennial winter counts suggest that populations have been increasing in West Virginia since the early 1980's (WVDNR, 2004). The estimated hibernating population in West Virginia has almost doubled from 6,500 in 1990 to 12,677 Indiana bats in the winter survey of 2004/2005 (WVDNR, 2005). Increases in numbers of bats at Hellhole have accounted for most of this growth.

Due to the colonial nature of Indiana bats, conducting censuses of hibernating bats is the most reliable method of tracking population/distribution trends range-wide, and provides a good representation of the overall population status and distribution. However, the relationship between wintering populations and summering populations is not clearly understood. It is known that individuals of a particular maternity colony come from one to many different hibernacula, therefore the summer location of most, if any, individuals of any particular hibernacula is often not known. Indiana bats have been documented to travel up to 300 miles from their hibernaculum to their maternity areas (Gardner and Cook 2002). Therefore, bats wintering or summering in West Virginia may come from a number of surrounding states, and the status of Indiana bats within each state's hibernacula may not reflect the status of that state's maternity population.

Reasons for Decline and Continued Threats

Because disturbance to hibernacula is a major threat to the Indiana bat, protection of hibernacula is a management priority. While many hibernacula have been protected, disturbance to hibernacula continues. Land use practices have also been identified as a suspected cause in the decline of the Indiana bat, particularly because habitat in the bats' maternity range has changed dramatically from pre-settlement conditions. Indiana bats exhibit site fidelity to their traditional summer maternity and foraging areas, and are known to return to the same general area to establish maternity colonies from year-to-year (Humphrey et al. 1977; Gardner et al. 1991a, b; Callahan et al. 1997; Indianapolis Airport Authority 2003, 2004; Kurta and Murray 2002; Butchkoski and Hassinger 2002; Gardner et al. 1991a, Gardner et al. 1996). Roosting/foraging area fidelity may serve to increase the probability of successful reproduction, and to maintain social interactions between members of the population. Due to the ephemeral nature of roosting sites, bats are probably not dependant on the continued suitability of an individual tree. However, landscape level alterations in traditional maternity habitats may adversely affect Indiana bat survival and reproductive success.

Environmental Baseline

The baseline conditions in relation to the Indiana bat and its habitat within the MNF are fully described in the July 2006 BO on pages 39-40 and 43-47. These descriptions remain current with the following exceptions. Surveys were conducted during the summer of 2006 at the site of the suspected maternity colony in Pendleton County (as described on page 39 of the July 2006 BO). Emergence counts at the previously identified roost tree documented over 30 bats emerging from the tree, however subsequent mist netting in the area suggests that no maternity activity is occurring at the site. Rather these surveys indicate that the tree and area is used by a bachelor colony of male Indiana bats (B. Douglas, C. Stihler, D. Arling, C. Sanders; personal observations).

Additional surveys at the previously documented maternity colony on the MNF in Tucker County were also conducted in the summer of 2006. While the roost trees that were used in the previous years have become unsuitable, habitat reviews indicate that area continues to provide a large number of potentially suitable maternity roost trees. Although numerous male Indiana bats were captured, mist net surveys did not result in the capture of any female Indiana bats. These results indicate that Indiana bats continue to use the areas for roosting and foraging throughout the summer, however it is not known whether a maternity colony still exists in the area.

Status of the Species within the Action Area

Two sites located approximately 2 miles northeast of the pipeline were surveyed for bats using mist nets in 2003. These sites netted 10 bats of 3 species. An additional site, also surveyed in 2003, located approximately 1.7 miles southeast of the project area captured 11 bats of the same species. These surveys did not capture or otherwise identify any Indiana bats or any evidence of Indiana bat maternity activity within the project area. The Nine pipeline project area is approximately 14 miles from the closest known maternity site/colony which is located near the Monongahela National Forest in Tucker County.

The closest known hibernacula to the Nine Pipeline project are Big Springs Cave (~ 12 mi.), Coal Run Cave (~ 12 mi.) and Cave Hollow Arbogast/Cave (~ 14 mi.). Fall swarming activity is believed to be concentrated within five miles of known hibernacula. No project activities are proposed to occur within five miles of any known hibernacula, therefore the Service does not anticipate that any swarming habitat will be affected.

Effects of the Action

The proposed action would disturb a total of approximately 8 acres of forested habitat that could provide potentially suitable Indiana bat habitat, including 2.43 acres within the MNF and an additional 5.5 acres on private lands. Impacts to private lands are evaluated here as an interrelated effect of the proposed federal action.

No harvest will occur within a five-mile radius of a known Indiana bat hibernaculum or within two miles of maternity colony. Consequently, no impacts to hibernacula, swarming zones, or known maternity sites are anticipated to occur. However, the project area could provide potential suitable roosting and foraging habitat for the Indiana bat, and some harvest activities could occur outside of the Indiana bat hibernation period.

Some tree felling activities associated with the proposed project could occur outside of the hibernating period. Tree removal during the non-hibernation period (April 1 – November 14) may result in mortality (take) of an individual roosting Indiana bat, if a tree that contains a roosting bat is removed intentionally or felled accidentally. If a bat using a roost tree that is removed is not killed during the removal, it may be forced to find an alternative roost tree, potentially expending a significant amount of energy that would result in harm or harassment of the individual. The potential adverse effects are fully described on pages 51-53 of the July 2006 BO and could include increased stress; and increased energy demands from searching for new roost areas, including decreased thermoregulatory efficiency, all of which could lead to reduced reproductive success.

However, because of the small scale of the proposed project, and the incorporation of the terms and conditions of the programmatic BO, the Service concludes that while there is potential to unknowingly remove an established Indiana bat roost tree during implementation of tree clearing activities, for the Nine Pipeline project, this likelihood will be small, and would be restricted to the removal of single (rather than multiple) lower quality alternate roost trees. It is also anticipated that overall the Nine Pipeline Project will not result in the long-term or significant reduction of populations of the Indiana bat. This determination is consistent with the rationale and conclusions of the programmatic BO, and is more fully described on page 53 of that document.

All proposed activities fall within the scale and the scope addressed in the programmatic BO and within the level of take identified in the Incidental Take Statement. If future monitoring conducted on the MNF identifies additional evidence of Indiana bats utilizing the project areas, the MNF would consult with the Service and the West Virginia Division of Natural Resource to develop further protective measures in accordance with the MNF Forest Plan and the programmatic BO.

Cumulative Effects

Future Federal, State, local and private actions that are reasonably certain to occur within the Action area, will most likely either be carried out by, or will require a permit from, the Forest Service. These actions will therefore require a section 7 consultation. The effects of the entire project, including the indirect effects of this federal action that are expected to occur within private lands have been considered in the Effects of Action section above. The Service is not aware of any additional future State, local, or private actions that could occur within the action area that would not be subject to a section 7 review.

Conclusion

The actions and effects associated with the proposed activities in the Nine Pipeline Project Area are consistent with those identified and discussed in the Service's programmatic BO. After reviewing the size and scope of the project, the environmental baseline, the overall status of the Indiana bat, new information on the species, the effects of the action, and the cumulative effects, it is the Service's biological opinion that the proposed action is not likely to jeopardize the continued existence of the Indiana bat because of: 1) the small size of the proposed project; and 2) no known maternity areas, swarming areas or hibernacula are located in close proximity to the project; and 3) limited mist net surveys conducted within 2 miles of the project area did not capture any Indiana bats.

Incidental Take Statement

The Service anticipates that the proposed actions associated with the Nine Pipeline Project Area will result in the incidental take of Indiana bat as outlined in Table 1. Because, the applicant has not requested an incidental take statement for activities on non-federal lands, the incidental take quantified below is associated only with those activities occurring on MNF.

The type and amount of anticipated incidental take is consistent with that described in the programmatic BO and does not cause the total annual level of incidental take (via harm to forested acres) in the programmatic BO to be exceeded. The actual incidental take reported by the Forest Service has consistently been below the annual levels estimated (exempted) in the programmatic BO, therefore, we do not anticipate that implementation of this project will result in the take levels in the programmatic BO to be exceeded.

Table 1: Authorized incidental take (as measured indirectly by acreage) due to the removal or disturbance of potential Indiana bat habitat on the Monongahela National Forest during calendar year 2008.

Activity	**Nine Pipeline Project**	**Other Projects Authorized during 2006**	**Total (2008)**
Timber Harvest (total)	2.43	0	**2.43**
Road Construction/Maintenance	0	0	**0**
Prescribed Burns	0	0	**0**
Federal Minerals	0	0	**0**

Please note that as per the terms and conditions of the July 2006 BO, Tier II BOs including this one, will track the amount of incidental take authorized. However, incidental take does not actually occur until the time that the project is implemented. Most projects authorized under Tier II BOs will not be implemented for a number of years; therefore the Forest Service must annually report the total amount of incidental take that occurs each year and for each project. This number will be compared to the maximum annual incidental take as authorized in the July 2006 programmatic BO. If it is determined during future project planning or the course of project implementation that either the authorized amount of project specific incidental take as detailed above, or the maximum amount of annual incidental take as detailed in the programmatic BO, may be exceeded, additional consultation with the Service will be required.

Reasonable and Prudent Measures

The Forest Service must implement all pertinent reasonable and prudent measures and terms and conditions stipulated in the programmatic BO to minimize the impact of the anticipated incidental take of Indiana bats, and to be exempt from the take prohibitions of section 9 of the ESA. The Service has determined that the implementing the reasonable and prudent measures specified in the programmatic BO will appropriately minimize the impact of incidental take anticipated for the proposed activities in this project area. Therefore, the no additional site-specific RPMs will apply.

Reinitiation Notice

Incidental take that occurs as a result of this and other projects on the MNF cannot exceed the annual or cumulative incidental take levels established in the programmatic BO. If implementation of any project or projects is anticipated to exceed these take levels, further consultation will be necessary. To ensure that incidental take is not exceeded, annual reports should be provided to this office tabulating the amount of incidental take on projects being implemented and authorized throughout the MNF, as indirectly measured by acres affected. Incidental take that is implemented each year will be compared against the level authorized in the BO to determine whether annual levels have been exceeded. To determine whether take is exceeded at the project level, the level of take implemented will be compared against the level authorized under each Tier II BO.

This fulfills your consultation requirements for this action. Should new information reveal effects of the agency action that may affect listed species or critical habitat in a manner or to an extent not considered in this opinion; or the agency action is subsequently modified in a manner that causes an effect to the listed species or critical habitat not considered in this opinion; or a new species is listed or critical habitat is designated that may be affected by the action; or the amount or extent of take as identified in Table 1 is exceeded, reinitiation of formal consultation as outlined in 50 CFR 402.16 is required.

If you have any questions regarding this letter, please contact Ms. Barbara Douglas of my staff at (304) 636-6586 ext. 19, or at the letterhead address.

Sincerely,

Laura Hill

for Thomas R. Chapman
Field Supervisor

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